

## 1 UNITED STATES DISTRICT COURT

## 2 DISTRICT OF MASSACHUSETTS

3 \* \* \* \* \*

4 LIBERTY MUTUAL INSURANCE \*  
COMPANY \*

5 Plaintiff \*

6 VERSUS \*

CA-96-10804-DPW

7 BLACK AND DECKER CORP. \*  
Defendant \*

8 \* \* \* \* \*

9 BEFORE THE HONORABLE DOUGLAS P. WOODLOCK

10 UNITED STATES DISTRICT COURT JUDGE

11 HEARING

12 MAY 18, 1998

## 13 APPEARANCES:

14 RALPH T. LEPORE, III, ESQ., SAMUEL ADAMS, ESQ.  
15 AND ROBERT A. WHITNEY, ESQ., Warner & Stackpole,  
16 75 State Street, Boston, Massachusetts 02109,  
on behalf of Plaintiff17 JACK R. PIROZZOLO, ESQ. AND RICHARD L. BINDER, ESQ.,  
18 Willcox, Pirozzolo & McCarthy, 50 Federal Street,  
Boston, Massachusetts 02110, on behalf of  
19 Defendant20 Courtroom No. 8 - 2nd Floor  
Post Office & Courthouse Bldg.  
21 Boston, Massachusetts 02109  
9:40 A.M. - 12:15 P.M.22 Pamela R. Owens - Official Court Reporter  
23 204 Post Office & Courthouse Building  
Boston, Massachusetts 02109

24 ALSO PRESENT: Linda Biagioni

25 Method of Reporting: Computer-Aided Transcription

1 this morning as I walk through it. But are there any  
2 other specific --

3 MR. PIROZZOLO: As to the other sites, it's our  
4 view that the pollution exclusion is not implied and all  
5 the issues that have been briefed --

6 THE COURT: Right.

7 MR. PIROZZOLO: -- become pertinent to a lesser  
8 or greater extent.

9 THE COURT: Okay. All right. Now, let's deal  
10 with what I consider to be the -- I also want to -- I  
11 guess I do want to talk about this long-term exposure  
12 stuff. I don't understand what the dispute is here. Is  
13 there a cost-sharing agreement?

14 MR. PIROZZOLO: It's an issue of fact, Your  
15 Honor. Liberty Mutual claims there is a cost-sharing  
16 agreement, but there may be a cost-sharing agreement  
17 among insurers. There is no written agreement. And our  
18 position is --

19 THE COURT: Are you getting a defense here?  
20 Have you gotten a defense here?

21 MR. PIROZZOLO: No. Black & Decker has provided  
22 its own defense. There has been some payments toward the  
23 costs of defense, but the amounts are in controversy. I  
24 think in view of Liberty Mutual's position, the fact issue  
25 that remains goes to the dollars as to what percentage.

1 THE COURT: Well, let me -- maybe, Mr. Lepore,  
2 You can tell me what your position is on this.

3 MR. LEPORE: Yes. Thank you, Your Honor.

4 THE COURT: I just don't understand. Is there a  
5 cost-sharing agreement among the insurers; is that it?

6 MR. LEPORE: Yes.

7 THE COURT: And roughly, what does it entail?

8 MR. LEPORE: The dispute is whether or not --  
9 this involves Black & Decker. It's all the insurers and  
10 Black & Decker. Liberty has agreed to pick up "X"  
11 percentage of the total defense dollars. That is based on  
12 a number of policies that were in existence for Black &  
13 Decker over a period of years, including lost policies.  
14 And the understanding was that Black & Decker would pick  
15 up that portion of policies that no one could find. All  
16 right. Now, since that agreement was reached and since we  
17 have actually paid bills, there have been a couple of  
18 policies that have been found. So, the percentages need  
19 to be changed. That's the dispute.

20 We are not disputing that we have a duty to  
21 defend those claims. And that's what I thought this  
22 lawsuit was about was the duty to defend coverage issues.  
23 That's why we say that there's no dispute about coverage.  
24 We have agreed that we have a duty to defend. The  
25 question is what is the percentage.

1 Now, until this lawsuit was filed, there had  
2 been many payments made on the Mississippi hearing loss  
3 cases, the Arkansas hearing loss cases --

4 THE COURT: Let me just -- it may be different.  
5 I'm sure it is different for each one of these.

6 MR. LEPORE: Right.

7 THE COURT: But what is the percentage for the  
8 Arkansas hearing loss case and the Mississippi hearing  
9 loss case?

10 MR. LEPORE: I think it's close to 30 percent.  
11 Thirty percent, Liberty's picking up.

12 MR. PIROZZOLO: I don't know.

13 MR. LEPORE: That's my distinct understanding.

14 THE COURT: And are you current on that?

15 MR. LEPORE: They haven't submitted us any bills  
16 since this litigation started.

17 THE COURT: And what's the understanding with  
18 respect to the remaining 70 percent?

19 MR. LEPORE: It's split among the other insurers  
20 and Black & Decker has a percentage as well. And I think  
21 Black & Decker's is less than 30 percent. What is it, 17  
22 percent?

23 MR. WHITNEY: I'm not sure of the number. It's  
24 less.

25 MR. LEPORE: I think it's around 20 percent.

1 THE COURT: And is this reduced to a writing?

2 MR. LEPORE: Oh, yeah.

3 MR. PIROZZOLO: No.

4 MR. LEPORE: Yes, there is.

5 MR. PIROZZOLO: There is a writing around, but  
6 it's never been signed on one of the cases, only one. On  
7 the others, there is none. Our position is they owe the  
8 entire amount.

9 THE COURT: Hold on. Let me understand this.  
10 So, there is -- is there a writing as to each of the five  
11 active cases?

12 MR. PIROZZOLO: No.

13 MR. LEPORE: There is no writing. There is a  
14 writing on one case. There is an agreement in place on  
15 the others. That is the understanding. Mr. Whitney may  
16 be able to --

17 MR. PIROZZOLO: We don't agree with that.

18 MR. WHITNEY: My understanding is the  
19 Mississippi hearing loss claim, as it's been called,  
20 is the largest of the cases. There is a document, an  
21 agreement that was apparently entered into between Black &  
22 Decker and its primary and excess carriers. Pursuant to  
23 the agreement, payments were made and accepted by Black &  
24 Decker pursuant to that agreement. The agreement also  
25 covers an Arkansas hearing loss claim. It also covers by

1 agreement -- and it has a separate case for an Arkansas  
2 hearing loss claim -- similar numbers, similar situation --

3 THE COURT: But let me --

4 MR. WHITNEY: I'm sorry.

5 THE COURT: The agreement itself was -- the  
6 document that you're referring to, is it executed by all  
7 parties?

8 MR. WHITNEY: I believe it was executed --  
9 signed original pages by all the parties. Yes. In fact,  
10 it is --

11 THE COURT: That agreement is as to the  
12 Mississippi hearing loss --

13 MR. WHITNEY: Hearing loss claim. There is a  
14 separate one for the Arkansas hearing loss.

15 THE COURT: Separate document, too?

16 MR. WHITNEY: Separate document, my  
17 understanding is. The Mississippi vibration and hands-on  
18 vibration claim --

19 THE COURT: Right.

20 MR. WHITNEY: -- that, with the understanding of  
21 the parties -- and I think it's in the records that was  
22 submitted -- was the payment schedule under the hearing  
23 loss -- our agreement -- was carried over to the vibration  
24 claims because it was involving the same parties, the same  
25 attorneys, the same Black & Decker, same policies, and

1 payments were also made pursuant to the agreement for that  
2 claim. We were treated as a single case on the underlying  
3 basis. There are some other claims --

4 THE COURT: Alwell and the maritime matters?

5 MR. WHITNEY: Yes. And those are covered in our  
6 papers and which were not specifically covered by this.  
7 However, a duty to defend was accepted. And that's the  
8 only issue that was originally raised was the duty to  
9 defend in the papers.

10 THE COURT: Well, is there a dispute now as to  
11 money? I mean, let's say you accept it.

12 MR. WHITNEY: My understanding is that no one  
13 submitted a bill for the Alwell claim, Your Honor.

14 THE COURT: But what's the position of Liberty  
15 Mutual with respect to Alwell and Maritime hearing  
16 loss cases? Is it that you accept the duty to defend --

17 MR. WHITNEY: That's my understanding, Your  
18 Honor.

19 THE COURT: -- according to the schedule  
20 established for --

21 MR. WHITNEY: No. That would be a separate  
22 agreement, Your Honor, depending on -- between the parties  
23 to work out. There are other carriers with respect to  
24 those claims as well. And Black & Decker, before this  
25 lawsuit, my understanding, again, was that the agreement

1 of these types of claims, because of the numerous parties  
2 and the extensive nature of the time periods in dispute  
3 that Black & Decker had with other potentially responsible  
4 parties, other tool manufacturers, was an attempt to come  
5 to some agreement amongst all the parties, carriers and  
6 Black & Decker with respect to all of these so-called  
7 long-term exposure claims. My understanding is -- because  
8 the Alwell claim is relatively new and because there's  
9 a litigation pending -- that no bills were ever tendered  
10 to Liberty Mutual or Liberty Mutual is going to pay and  
11 enter into an agreement with Black & Decker and the other  
12 excess carriers with respect to payments for  
13 the defense.

14 THE COURT: What about maritime hearing loss?

15 MR. WHITNEY: I think that's the same situation.

16 THE COURT: That is, no bills submitted --

17 MR. WHITNEY: That's my understanding.

18 THE COURT: -- to date?

19 MR. LEPORE: Right.

20 MR. WHITNEY: Again, that's more recent than the  
21 other claims. It's not as new as Alwell, but it's  
22 more recent.

23 THE COURT: Okay.

24 MR. WHITNEY: That's my understanding. My  
25 understanding is, again with respect to long-term

1 exposure, there is no issue on the duty to defend. In  
2 other words, an agreement has been made to pay with  
3 respect to defense. There are some underlying agreements  
4 which basically supersede the policies, but that's  
5 governing payment schedules.

6 THE COURT: Are they provisional agreements  
7 for purposes of litigation or are they -- from your  
8 perspective -- a settlement of the obligation to defend?

9 MR. WHITNEY: My understanding is they were the  
10 settlements of the obligation to defend of all the  
11 carriers. Again, the documents themselves, the parties  
12 were able to take out of the document after a certain  
13 period of time, to give notice since they were canceling  
14 the agreement to pay. That's never been done.

15 THE COURT: I'm sorry. I misunderstand.

16 MR. WHITNEY: Under the agreement itself, any of  
17 the parties can withdraw. That's never been done. Black  
18 & Decker has never submitted a withdrawal to the agreement  
19 saying "we don't want to -- we no longer agree with the  
20 payment schedule, we no longer agree with anything."  
21 Those claims have now been brought into this lawsuit,  
22 although the agreements are still valid and enforceable.

23 THE COURT: All right. Now, let me understand  
24 from your perspective what, then, a dispute would be in  
25 this case. Is it simply an accounting dispute?

1           MR. WHITNEY: My understanding is that one of  
2           the problems they have is with respect to the percentage  
3           that was assigned to Black & Decker under the original  
4           hearing loss claim as a result of an additional finding of  
5           several policies. It was before this lawsuit was filed,  
6           there were three or four additional policies that would  
7           change their percentage from something like 27 to 23 in  
8           the claim that they want. And if you look at their motion  
9           papers, it actually says the only relief they're seeking  
10          is the value of the difference between what's set forth in  
11          the agreement and the money they ultimately think they  
12          would have to pay which is the percentage change. So,  
13          essentially, they're seeking to enforce a revision of what  
14          we call the settlement agreement as to the defense  
15          obligations for the Mississippi hearing loss claim and the  
16          other claims that are being governed under that agreement.  
17          And, again, in their motion papers, it is very specific.  
18          That's the relief they seek, is the value, the dollar  
19          difference. In other words, they want the percentage  
20          changed. That's all.

21           THE COURT: What is your understanding of the  
22          opportunity for revision when lost policies are found?

23           MR. WHITNEY: My understanding of the way the  
24          intent was at the time was that --

25           THE COURT: Is there some governing -- put to

1 one side the intent. Is there some kind of governing  
2 language on revisions?

3 MR. WHITNEY: On revisions to the agreement? I  
4 think the only governing language where the parties could  
5 agree in writing to change it and parties could opt out of  
6 the agreement -- in other words, if they didn't agree with  
7 the changes, they could leave. They could say, "We're no  
8 longer going to be governed by this." And, theoretically,  
9 there was the carrier, then a suit could entail with  
10 respect to that carrier who was Black & Decker. Black &  
11 Decker could theoretically basically say whatever payments  
12 he's gotten so far could be credited and they could move  
13 against the carrier. But, again, in this case, my  
14 understanding is that the carriers all agreed to pay it --  
15 I mean, the primary carriers agreed with respect to the  
16 duty to defend.

17 THE COURT: With respect to these new-found  
18 policies, what is the review on that? Should there be a  
19 revision?

20 MR. WHITNEY: Yes. We don't think there's a  
21 dispute. These are not the originals -- not the policies  
22 in this case, Your Honor. These are the policies that  
23 were found prior to this case.

24 THE COURT: Right.

25 MR. WHITNEY: And there's some correspondence in

1 the record back and forth, I think, in our opposition  
2 papers.

3 MR. LEPORE: We don't dispute that.

4 MR. WHITNEY: No, there's no dispute on that.  
5 And that's the point of the brief that we submitted to  
6 Your Honor with respect to the long-term claims, that  
7 there is no active dispute on the defense obligation.  
8 They have raised an indemnity obligation. If you'll  
9 notice in the papers, again, it doesn't really set forth  
10 any facts upon which summary judgment could be entered  
11 with the indemnity issue. With respect to the defense --

12 THE COURT: Is there any realistic likelihood  
13 that indemnity --

14 MR. WHITNEY: No. I think on most of them, it  
15 is not, especially the hearing, I think there's been  
16 dismissals on the hearing loss, on the two hearing loss  
17 claims. The vibrations, I don't believe there's an  
18 anticipated indemnity. In other words, the payments  
19 anticipated by Black & Decker are low. The Alwell  
20 claim, I think so far, their numbers are zero. I believe  
21 on the -- if I remember, aside from memory, Your Honor --  
22 the maritime hearing loss claim, I think, also, so far the  
23 estimated damages are also zero for indemnity purposes. I  
24 think Ralph probably has the numbers.

25 MR. LEPORE: The fact is, Judge, the Arkansas

1 hearing loss case has been dismissed with no payment.

2 THE COURT: Right.

3 MR. LEPORE: The Mississippi hearing loss case  
4 has been dismissed with no payment. And the maritime  
5 hearing loss case has been dismissed with no payment.

6 The two that remain open are the Mississippi  
7 vibration claims and the Alwell claims, both of which  
8 are the new ones.

9 THE COURT: Right. Is that right? Is the  
10 Mississippi -- is the maritime hearing loss dismissed with  
11 no payment or is it vibration --

12 MR. LEPORE: Yes.

13 MR. PIROZZOLO: Yes.

14 THE COURT: It is the maritime case?

15 MR. PIROZZOLO: Yes, Your Honor.

16 MR. BINDER: Yes.

17 THE COURT: So, Arkansas hearing loss,  
18 Mississippi hearing loss, and maritime hearing loss are  
19 dismissed with no --

20 MR. PIROZZOLO: Dismissed with no damages.

21 THE COURT: Okay. So there's no indemnity issue  
22 with respect to those?

23 MR. LEPORE: That's correct.

24 MR. PIROZZOLO: That's right.

25 THE COURT: And we simply don't know, although

1 your anticipation is that Alwell, Mississippi, and  
2 vibrations will not result in indemnity?

3 MR. LEPORE: (Shaking head up and down).

4 THE COURT: Now, do I have the documents that  
5 purport to constitute the agreement?

6 MR. PIROZZOLO: There are no documents, Your  
7 Honor.

8 THE COURT: Well, do I have them in the record?

9 MR. WHITNEY: I was just looking right now.

10 MR. PIROZZOLO: I have it in front of me, Your  
11 Honor.

12 MR. WHITNEY: There are two agreements, Your  
13 Honor.

14 THE COURT: Okay. I just want to understand  
15 where are they in the record.

16 MR. WHITNEY: I'm going to look right now.

17 THE COURT: All right. So what kind of money  
18 are we talking about on this long-term exposure stuff?  
19 Short dollar stuff?

20 MR. LEPORE: Yes. It's not a lot. I mean, I  
21 don't have the precise numbers. I think the defendants  
22 would have a better understanding because they haven't  
23 submitted any bills to us since the litigation started.  
24 But the percentage difference between what we claim they  
25 agreed to, which they deny now, and the difference with it

1 is about four percent, I think. And, so --

2 MR. WHITNEY: Small.

3 MR. LEPORE: -- even if it's four percent of a  
4 hundred thousand dollars, it's \$4,000. So, calculate it  
5 to a million and it's only \$40,000. I mean, it's small  
6 dollars.

7 THE COURT: Okay. Is there any dispute that it  
8 is short money, Mr. Pirozzolo?

9 MR. PIROZZOLO: Yes, Your Honor. I dispute a  
10 great deal of what's been said here.

11 THE COURT: Well, no doubt. But as to the  
12 amount involved, are we talking about short dollars here?

13 MR. PIROZZOLO: Oh, no, no.

14 THE COURT: How much?

15 MR. PIROZZOLO: It's a substantial amount.

16 THE COURT: In what range?

17 MR. PIROZZOLO: Over -- I think over a hundred  
18 thousand. Let's see what we have here. We have got on  
19 Mississippi Vibration, 380,000.

20 THE COURT: Well, let me see. Is that the  
21 380,000 -- that is your 30 percent?

22 MR. PIROZZOLO: Well, we don't agree with the 30  
23 percent.

24 THE COURT: Well, that may or may not be true.  
25 What I want to understand is what is it that they have --

1        what amount that they claim they are not responsible for?

2                MR. PIROZZOLO: I don't have that breakdown.

3        These are the amounts we have paid.

4                THE COURT: That's the amount that you have paid  
5        out on --

6                MR. PIROZZOLO: Black & Decker has paid. That's  
7        the table that should be in the papers.

8                THE COURT: Now, have you submitted bills or  
9        invoices for your defense to the primary insuring  
10       consortium, I guess, is what it is.

11               MR. PIROZZOLO: I believe no bills have been  
12       submitted. I believe no bills have been submitted since  
13       this case began.

14               THE COURT: Why not?

15               MR. PIROZZOLO: Because it's been the subject of  
16       litigation here. And, so, we've been awaiting the  
17       determination. All bets are off once Liberty Mutual  
18       brought the case.

19               THE COURT: Well, but it strikes me that there  
20       is some degree of self-inflicted wound then. Because to  
21       the degree that we're really talking about whether or not  
22       you should have any obligation yourself to undertake  
23       payments, it's not the full amount. It is some portion,  
24       say 30 percent, because that was the figure that was used  
25       here. And, so, you're entitled to 70 percent of it that

1       you have been pursuing.

2               MR. PIROZZOLO: Well, I'll have to -- I can't --  
3       between now and Friday, I can get the figures, but I just  
4       don't have them here.

5               THE COURT: Well, I just want to understand  
6       because I think this is one that I can take up separately  
7       and deal with relatively -- I think relatively promptly in  
8       this context. The suggestion is that there is a writing  
9       which memorializes an agreement between the parties. And,  
10      so, I'll take a look at that writing. I haven't looked at  
11      it now. Frankly, I haven't waded through the record to  
12      see if --

13              MR. PIROZZOLO: I have it in front of me, Your  
14      Honor.

15              THE COURT: What's the citation?

16              MR. PIROZZOLO: It is an unsigned letter.

17              THE COURT: What does it say?

18              MR. PIROZZOLO: Unsigned document. It is at the  
19      appendix "Miscellaneous" -- I'm sorry -- 27, page 59.  
20      Unsigned and it's entitled "Interim."

21              THE COURT: Why don't you pass it up, please.

22              MR. PIROZZOLO: It's all bound. As far as --  
23      that's the only writing in the record of any kind on this  
24      subject. I believe Mr. Whitney is blending the cautionary  
25      agreements among defendants with the obligation to pay

1 defense costs.

2 THE COURT: Is this the document?

3 MR. WHITNEY: Your Honor, there are several  
4 documents. In the summary judgment record, the defendants  
5 did not submit a cost-sharing agreement. There's another  
6 agreement. I don't have it with me here. But if you'll  
7 look in the defendant's initial memorandum that they  
8 submitted for summary judgment --

9 THE COURT: Well, I guess at this point --

10 MR. WHITNEY: Only because, Your Honor, they  
11 state -- they admit that there are agreements. It says --  
12 I'll just read it for the record. Black & Decker --

13 THE COURT: What page?

14 MR. WHITNEY: Page -- I'm sorry -- 60 --  
15 six-zero -- of Black & Decker's original brief. That's  
16 their original summary judgment. About halfway down the  
17 page, "Black & Decker and its insurers allocate a defense  
18 cost pursuant to a cost-sharing agreement with each  
19 insurer paying a proportion of the same for the exposure  
20 period to which it provided coverage.

21 THE COURT: Right. But --

22 MR. WHITNEY: And then if you go over -- and  
23 then if you look --

24 THE COURT: -- the real issue, I guess, is  
25 what's the nature of the agreement? I read that agreement

1 -- the language of that very quickly to indicate that it  
2 is an interim agreement not finally resolving the  
3 respective responsibilities of the parties.

4 MR. WHITNEY: Well, I think that's -- I think  
5 that's true. The idea of the agreements were that they  
6 could ultimately be changed by the parties. But  
7 throughout the entire course of the underlying action,  
8 the defense costs were being paid by the defense group --  
9 I mean, the insurers -- together along with Black &  
10 Decker.

11 THE COURT: The majority of the defense costs  
12 are being paid.

13 MR. WHITNEY: That's true, pursuant to the  
14 agreement that Black & Decker also agreed to. If you  
15 actually look at page 63 of their brief, again, what I  
16 mentioned before, they're considering here -- if you look  
17 at the top of the page. It goes, "Nonetheless, Liberty  
18 Mutual has not reimbursed Black & Decker for the portion  
19 of the defense costs that Black & Decker erroneously paid  
20 on the basis of the misrepresentation that the 1964 to  
21 1967 policies did not exist. The Black & Decker group  
22 thus seeks payment of the defense costs Liberty Mutual  
23 wrongfully withheld. So, you see, that's not the entire  
24 defense costs. This is a three-year period that we were  
25 talking about before that needed to be adjusted. Those

1 are the three policies. Black & Decker did have a share  
2 contrary to what Mr. Pirozzolo just represented. It was a  
3 party to the agreement and, in fact, it accepted payments  
4 pursuant to the agreement. So, to the extent that he  
5 claims now that if we signed, it's only interim,  
6 nevertheless, the parties were --

7 THE COURT: The question of whether or not, by  
8 their conduct, they have adopted the agreement or ratified  
9 the agreement -- or however you characterize it -- is one  
10 issue.

11 MR. WHITNEY: Yes.

12 THE COURT: The second issue is what does the  
13 agreement mean. Does it simply mean this is something  
14 we're going to resolve finally at a later point, but for  
15 present purposes we'll back up defense costs in this  
16 fashion. And that's what it seems to mean. That is,  
17 that we will come back to and resolve definitively the  
18 respective responsibilities in litigation, say, such as  
19 this. Isn't that what the "interim" means?

20 MR. WHITNEY: I don't have it in front of me,  
21 Your Honor. I'm sorry. But I think that it's interim in  
22 the sense that it was described as interim because they  
23 were working on a percentage and cost sharing. It wasn't  
24 interim in the sense that "this is only during the time  
25 period now, we're going to sue you later." I don't think

1 that was the deal at all. In fact, Black & Decker picked  
2 up a portion of all the defense costs as a result of this  
3 understanding that there were many years of coverage,  
4 historical years of coverage for which there was no  
5 evidence of any policy coverage and future time periods  
6 later on in time when injuries were supposedly being  
7 manifested by workers post any other carriers being on the  
8 list. And, so, Black & Decker was picking up a percentage  
9 share of the later time periods where they were basically  
10 self-insured in that sense.

11 THE COURT: Okay. I guess I don't want to spend  
12 much more time on this aspect of it, except that I do want  
13 to have the relevant writings -- what the parties consider  
14 to be the relevant writings -- in place here so that  
15 I have, at least, had a chance to look at them. My  
16 preliminary reading of it, as I say, is that there may  
17 have been an agreement manifested by Black & Decker to  
18 deal with this on an interim basis. But that's not  
19 necessarily an agreement to resolve finally the respective  
20 responsibilities as to defense costs. And if it's not,  
21 then the long-term exposure cases come rolling back into  
22 the case itself.

23 So, if there are other documents other than the  
24 one that Mr. Pirozzolo passed up to me, you'll perhaps  
25 file those by the close of business tomorrow.

1 MR. LEPORE: Fine.

2 MR. PIROZZOLO: From the record, Your Honor, or  
3 outside of the record?

4 THE COURT: Outside of the record. I want to  
5 get to this. This isn't -- it's clear to me that we're  
6 not going to be resolving definitively a whole series of  
7 issues like this. I want to get an idea of what my next  
8 steps are going to be and whether or not I can break out  
9 bits and pieces of it. Maybe I can break out bits and  
10 pieces. Maybe I can't. I don't know about these  
11 long-term exposure cases. I had this simple-minded hope  
12 that maybe I could break through that one, but now I know  
13 a bit more. So, you'll file with me whatever --

14 MR. LEPORE: By tomorrow, Your Honor.

15 THE COURT: Okay. Now --

16 MR. PIROZZOLO: Your Honor, would that include  
17 some additional information from our side as well?

18 THE COURT: Well, whatever it is that people  
19 claim is the agreement here and we'll talk about the  
20 agreement. You say there's no agreement at all. Did you  
21 receive payments?

22 MR. PIROZZOLO: I think payments were received  
23 as an interim agreement. But it's among the carriers. In  
24 other words, the carriers get together and say "this is  
25 what we'll pay." But the law is that they have to pay the

1 full -- each carrier is liable for the full defense cost.  
2 And, so --

3 THE COURT: Well, they may be. But they are not  
4 all going to pay it at the same time. And, furthermore,  
5 you can compromise the claim in some fashion.

6 MR. PIROZZOLO: Why should we compromise what  
7 we're owed? We were owed -- we may accede to it, but we  
8 are owed it.

9 THE COURT: I suppose you do that because if you  
10 are a signatory to it or manifest ratification of it, you  
11 do that because there's some dispute that you're uncertain  
12 about. And, so, it's better to have some money than no  
13 money or have owed directly into litigation from the very  
14 beginning.

15 In any event, I take it that you received some  
16 money during this time period and accepted the money and  
17 submitted bills according to the agreement. You say it's  
18 an imposition on you?

19 MR. PIROZZOLO: Anticipating that I have to get  
20 ahold of two different people, whose whereabouts I don't  
21 know right now, I wonder if we could extend it until  
22 Wednesday to get back to Your Honor.

23 THE COURT: Yes, yes.

24 MR. PIROZZOLO: I may be able to do it tomorrow.  
25 But if they're not available, I just --

WILLCOX, PIROZZOLO AND MCCARTHY  
PROFESSIONAL CORPORATION  
FIFTY FEDERAL STREET

BOSTON, MASSACHUSETTS 02110

TELEPHONE (617) 482-5470

TELECOPIER (617) 423-1572

HAROLD M. WILLCOX (1925-1975)

JACK R. PIROZZOLO

RICHARD F. MCCARTHY

RICHARD L. BINDER

RICHARD E. BENNETT

JUDITH S. ZISS

CHRISTOPHER R. GODDU

KATHERINE L. YOUNG

OF COUNSEL

RICHARD P. CROWLEY

(REGISTERED PATENT ATTORNEY)

February 14, 2000

HAND DELIVERED

Robert A. Whitney, Esquire  
Holland & Knight, LLP  
One Beacon Street  
Boston, MA 02108

Re: Liberty Mutual Insurance Co. v.  
The Black & Decker Corp., et als.  
Civil Action No. 96-10804-DPW

Dear Rob:

I enclose herewith binders of numbered invoices  
and summary charts for the following matters sites:

California Maritime Hearing Loss: 11/15/95  
through 3/31/97; Nos. SUPP 2-885 through SUPP 2-  
930, SUPP 1-00005 to SUPP 1-00008, SUPP 1-00011  
to SUPP 1-13, SUPP 1-00019 to SUPP 1-20, SUPP 1-  
01260, SUPP 1-00023, SUPP 1-00026, SUPP 1-00029,  
SUPP 1-00032, SUPP 1-00002.

Maritime Asbestos Volume I: 5/12/94 through  
5/9/96; Nos. SUPP 2-931 to SUPP 2-1266.

Maritime Asbestos Volume II: 5/29/96 through  
10/29/99; Nos. SUPP 2-1267 to SUPP 2-1420.

Alwell: 10/29/99 through 12/30/99; Nos. SUPP 2-  
00074-C to SUPP 2-00074-J.

**WILLCOX, PIROZZOLO & MCCARTHY**

Robert A. Whitney, Esquire

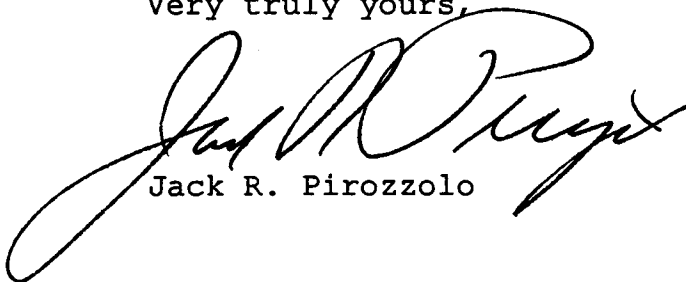
-2-

February 14, 2000

Pennsylvania Benzene: 10/29/99 through 12/13/99;  
Nos. SUPP 2-00357-C to SUPP 2-00357-F.

Please contact me if you have any questions.

Very truly yours,

A handwritten signature in black ink, appearing to read "Jack R. Pirozzolo", written in a cursive style. The signature is positioned above the printed name "Jack R. Pirozzolo".

Jack R. Pirozzolo

JRP:rjp  
Enclosures

WILLCOX, PIROZZOLO AND MCCARTHY

PROFESSIONAL CORPORATION

FIFTY FEDERAL STREET

BOSTON, MASSACHUSETTS 02110

HAROLD M. WILLCOX (1925-1975)  
JACK R. PIROZZOLO  
RICHARD F. MCCARTHY  
RICHARD L. BINDER  
RICHARD E. BENNETT  
JUDITH S. ZISS  
CHRISTOPHER R. GODDU

TELEPHONE (617) 482-5470

TELECOPIER (617) 423-1572

OF COUNSEL  
RICHARD P. CROWLEY  
(REGISTERED PATENT ATTORNEY)

October 12, 2000

VIA HAND DELIVERY

Ralph T. Lepore, III, Esquire  
Holland & Knight  
One Beacon Street  
Boston, MA 02108

Re: Liberty Mutual Insurance Co. v.  
The Black & Decker Corp., et als.  
Civil Action No. 96-10804-DPW

Dear Ralph:

We are sending to you herewith the invoices pertaining to defense costs (most of which have previously been produced) with respect to the Arkansas Hearing Loss, Mississippi Hearing Loss and Mississippi Hand/Arm Vibration Long-Term Exposure Claims. These are organized in a convenient format for your review. There are five notebooks of material; each contains the invoices with respect to the pertinent claims and summaries of the amounts of those invoices allocable to Black & Decker. In addition, we have included, where applicable, an explanation of documents concerning shared local counsel expenses.

Also enclosed, to update the production, are additional invoices for recent defense costs in the Alwell and Maritime Asbestos Long-Term Exposure Claim, together

**WILLCOX, PIROZZOLO & MCCARTHY**

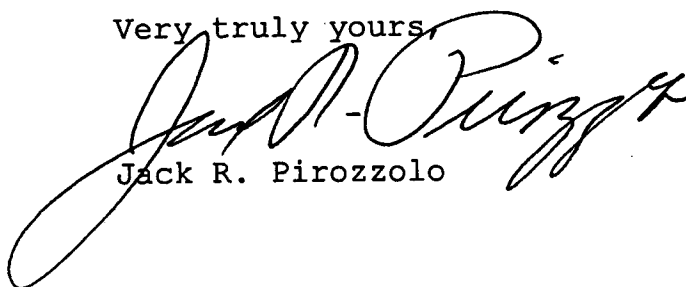
Ralph T. Lepore, III, Esquire

-2-

October 12, 2000

with updated final pages of the summaries of the costs through the date of the last invoice. The Alwell invoices are numbered SUPP 2-0074-P through SUPP 2-0074-W and the Maritime Asbestos invoices are numbered SUPP 2-1420-A through SUPP 2-1420-D. The Alwell summary page is numbered SUMM 2-B and the Maritime Asbestos summary page is numbered SUMM 0014. You may want to add this material to the notebooks containing invoices for the Alwell and Maritime Asbestos claims, previously provided.

Very truly yours,

A handwritten signature in dark ink, appearing to read "Jack R. Pirozzolo", with a large, stylized flourish extending from the bottom left.

Jack R. Pirozzolo

JRP:pw  
Enclosures

WILLCOX, PIROZZOLO AND MCCARTHY

PROFESSIONAL CORPORATION

FIFTY FEDERAL STREET

BOSTON, MASSACHUSETTS 02110

HAROLD M. WILLCOX (1925-1975)  
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RICHARD F. MCCARTHY  
RICHARD L. BINDER  
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CHRISTOPHER R. GODDU

TELEPHONE (617) 482-5470

TELECOPIER (617) 423-1572

OF COUNSEL  
RICHARD P. CROWLEY  
(REGISTERED PATENT ATTORNEY)

March 30, 2001

Ralph T. Lepore, III, Esquire  
Holland & Knight  
10 St. James Avenue  
Boston, MA 02116

Re: Liberty Mutual Insurance Co. v.  
The Black & Decker Corp., et als.  
Civil Action No. 96-10804-DPW

Dear Ralph:

I am forwarding to you herewith additional invoices recently provided to us relating to the Alwell (SUPP 2-0074X; SUPP 2-0074Y; SUPP 2-0074Z; SUPP 2-1641-1655), Pennsylvania Benzene (SUPP 2-1656-1661) and Maritime Asbestos (SUPP 2 1629-1640) long term exposure cases. Also enclosed are supplemental schedules of these invoices.

In reviewing the requests that your staff made for documents in the Miles & Stockbridge production, we noted that no request was made for a number of invoices that were part of that production. These invoices pertain to the Abarca long term exposure matter (SUPP 2-1580-1628; SUPP 2-1662-1663). As this no doubt was an oversight, we have taken the liberty of making copies and providing them to you, along with the pertinent schedule. (One of these invoices was recently provided to us.)

We also enclose a revised schedule of the invoices concerning the Abarca claim, which lists the portion of the Brown, McCarroll & Oaks Hartline invoices paid by Black & Decker (as Brown McCarroll represented several parties as local counsel, Black & Decker paid only a portion of that firm's invoices).

**WILLCOX, PIROZZOLO & MCCARTHY**

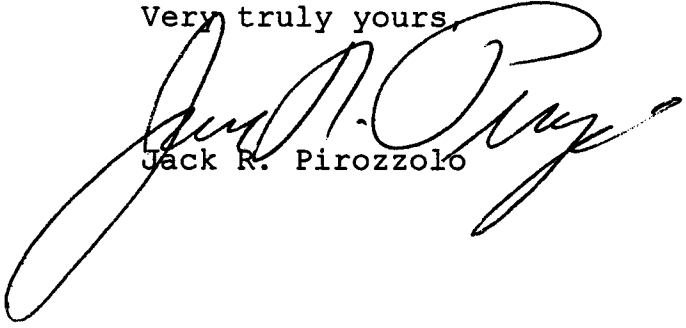
Ralph T. Lepore, III, Esquire

March 30, 2001

-2-

I also enclose status reports concerning the Alwell and Maritime Asbestos matters that Black & Decker requests you forward to Liberty Mutual (SUPP 2-1664-1674).

Very truly yours,

  
Jack R. Pirozzolo

JRP:pw  
Enclosures

WILLCOX, PIROZZOLO AND MCCARTHY

PROFESSIONAL CORPORATION

FIFTY FEDERAL STREET

BOSTON, MASSACHUSETTS 02110

HAROLD M. WILLCOX (1925-1975)  
JACK R. PIROZZOLO  
RICHARD F. MCCARTHY  
RICHARD L. BINDER  
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CHRISTOPHER R. GODDU

TELEPHONE (617) 482-5470

TELECOPIER (617) 423-1572

OF COUNSEL  
RICHARD P. CROWLEY  
(REGISTERED PATENT ATTORNEY)

July 11, 2001

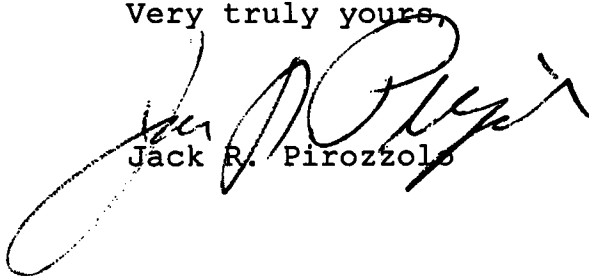
Ralph T. Lepore, III, Esquire  
Holland & Knight  
10 St. James Avenue  
Boston, Massachusetts 02116

Re: Liberty Mutual Insurance Co. v.  
The Black & Decker Corp., et als.  
Civil Action No. 96-10804-DPW

Dear Ralph:

I enclose some additional invoices recently provided to us regarding the Alwell (SUPP 2-1675-1684), Maritime Asbestos (SUPP 2-1685-1692) and Abarca (SUPP 2-1693) Long-Term Exposure Claims.

Very truly yours,

  
Jack R. Pirozzolo

JRP:ps  
Enclosures

7/13/01

5-7586-4

WILLCOX, PIROZZOLO AND MCCARTHY

PROFESSIONAL CORPORATION

FIFTY FEDERAL STREET

BOSTON, MASSACHUSETTS 02110

HAROLD M. WILLCOX (1925-1975)  
JACK R. PIROZZOLO  
RICHARD F. MCCARTHY  
RICHARD L. BINDER  
RICHARD E. BENNETT  
JUDITH S. ZISS  
CHRISTOPHER R. GODDU

TELEPHONE (617) 482-5470

TELECOPIER (617) 423-1572

OF COUNSEL  
RICHARD P. CROWLEY  
(REGISTERED PATENT ATTORNEY)

February 4, 2002

Ralph T. Lepore, III, Esquire  
Holland & Knight  
10 St. James Avenue  
Boston, MA 02116

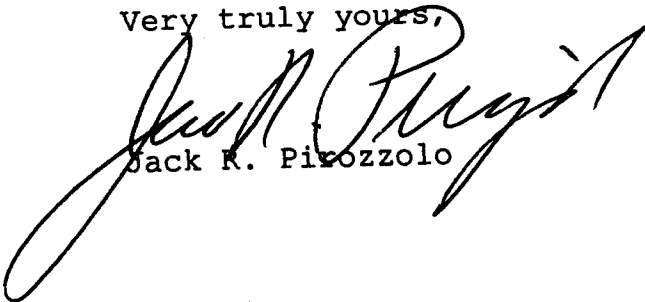
Re: Liberty Mutual Insurance Co. v.  
The Black & Decker Corp., et als.  
Civil Action No. 96-10804-DPW

Dear Ralph:

We are sending to you herewith some recent invoices pertaining to defense costs in the Maritime Asbestos and Alwell Long-Term Exposure Claims, together with updated summaries of the costs through the date of the last invoice. The invoices are labeled Supp 2-1694-1725.

You may want to add this material to the notebooks of invoices that we previously provided.

Very truly yours,

  
Jack R. Pirozzolo

JRP:ps  
Enclosures

2/5/02

57586-4  
6207

WILLCOX, PIROZZOLO AND MCCARTHY

PROFESSIONAL CORPORATION

FIFTY FEDERAL STREET

BOSTON, MASSACHUSETTS 02110

HAROLD M. WILLCOX (1925-1975)  
JACK R. PIROZZOLO  
RICHARD F. MCCARTHY  
RICHARD L. BINDER  
RICHARD E. BENNETT  
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CHRISTOPHER R. GODDU

TELEPHONE (617) 482-5470

TELECOPIER (617) 423-1572

OF COUNSEL  
RICHARD P. CROWLEY  
(REGISTERED PATENT ATTORNEY)

March 26, 2002

BY HAND DELIVERY

Ralph T. Lepore, III, Esquire  
Holland & Knight  
10 St. James Avenue  
Boston, MA 02116

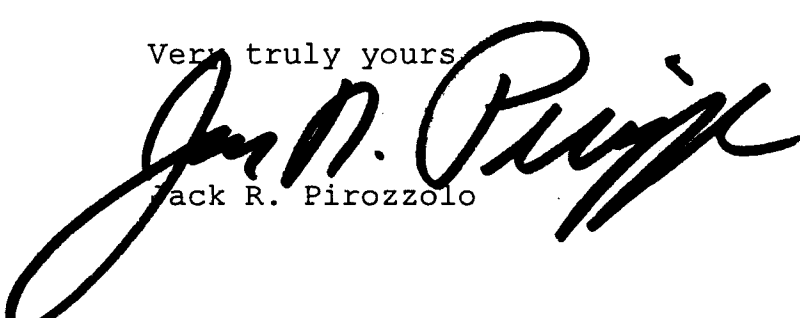
Re: Liberty Mutual Insurance Co. v.  
The Black & Decker Corp., et als.  
Civil Action No. 96-10804-DPW

Dear Ralph:

I enclose bound copies of invoices and summaries documenting the costs and interest incurred by Black & Decker with respect to twenty-four environmental sites. They are marked:

SUPP-3 00001 to 00268  
SUPP-3 00274 to 00987  
SUPP-3 00990 to 01324  
SUPP-3 01681 to 01761  
SUPP-3 01779 to 01987

Very truly yours

  
Jack R. Pirozzolo

JRP:jn  
Enclosures

**BLACK AND DECKER**  
**AMOUNTS DUE FROM LIBERTY MUTUAL WITH INTEREST**

CLAIM	COSTS	INTEREST	TOTAL
<b>Environmental Sites</b>			
A-1 Defense and Indemnification Costs	\$ 22,877.94	\$ 18,796.84	\$ 41,674.78
Beacon Heights Defense and Indemnification Costs	\$ 97,506.35	\$ 115,267.94	\$ 212,774.29
Bostik Defense and Indemnification Costs	\$ 9,030,681.66	\$ 5,499,291.98	\$ 14,529,973.64
BROS Defense and Indemnification Costs	\$ 442,085.15	\$ 388,558.01	\$ 830,643.16
Douglassville Defense Costs	\$ 14,272.31	\$ 15,513.87	\$ 29,786.18
Dudley & Eddy Defense Costs	\$ 70,797.23	\$ 82,909.37	\$ 153,706.60
Farrel Defense and Indemnification Costs	\$ 9,783,633.76	\$ 5,277,058.44	\$ 15,060,692.20
Fort Wayne Defense and Indemnification Costs	\$ 89,990.43	\$ 74,132.47	\$ 164,122.90
Harmonic Drive Defense and Indemnification Costs	\$ 344,220.38	\$ 228,439.19	\$ 572,659.57
Huth Oil Defense and Indemnification Costs	\$ 156,598.62	\$ 88,424.76	\$ 245,023.38
Jaffrey Sanitary Landfill Defense and Indemnification Costs	\$ 16,219.08	\$ 12,928.36	\$ 29,147.44
Laurel Park Defense and Indemnification Costs	\$ 54,308.67	\$ 72,191.26	\$ 126,499.93
Medway Defense Costs	\$ 5,972.79	\$ 5,072.92	\$ 11,045.71
New Bedford Defense and Indemnification Costs	\$ 347,698.56	\$ 415,642.20	\$ 763,340.76
Old Southington Landfill Defense and Indemnification Costs	\$ 71,145.50	\$ 52,999.17	\$ 124,144.67
PAS Fulton Indemnification Costs	\$ 65,173.22	\$ 54,156.91	\$ 119,330.13
PAS Oswego Indemnification Costs	\$ 74,384.54	\$ 44,444.00	\$ 118,828.54
Review Avenue/NYC Landfills Indemnification Costs	\$ 70,493.00	\$ 88,564.01	\$ 159,057.01
Shaffer Landfill Defense and Indemnification Costs	\$ 238,845.11	\$ 212,318.58	\$ 451,163.69
SHW Defense and Indemnification Costs	\$ 491,266.72	\$ 417,086.27	\$ 908,352.99
Simpsonville Defense Costs	\$ 8,817.20	\$ 12,640.27	\$ 21,457.47
SRSNE Defense and Indemnification Costs	\$ 153,038.72	\$ 134,785.43	\$ 287,824.15
Whitman Defense and Indemnification Costs	\$ 2,431,406.78	\$ 2,050,950.29	\$ 4,482,357.07
WW Cross Lagoon Defense and Indemnification Costs	\$ 327,403.58	\$ 374,144.26	\$ 701,547.84
WW Cross Tack Pile Defense and Indemnification Costs	\$ 1,303,837.52	\$ 432,154.26	\$ 1,735,991.78
<b>Long Term Exposure Claims</b>			
Abarca Bostik Defense Costs	\$ 189.06	\$ 184,485.19	\$ 184,674.25
Alwell Defense Costs	\$ 2,053.50	\$ 62,907.03	\$ 64,960.53
Arkansas Hearing Loss Defense Costs	\$ 568,554.45	\$ 507,940.40	\$ 1,076,494.85
Maritime Asbestos Defense Costs	\$ 3,677.41	\$ 723,099.59	\$ 726,777.00
Maritime Hearing Loss Defense Costs	\$ -	\$ 55,072.65	\$ 55,072.65
Mississippi Hearing Loss Defense Costs	\$ 1,224,957.09	\$ 1,549,535.92	\$ 2,774,493.01
Mississippi Hand/Arm Vibration Defense Costs	\$ 240,340.40	\$ 257,970.88	\$ 498,311.28
Pennsylvania Benzene Defense Costs	\$ -	\$ 106,516.12	\$ 106,516.12
<b>TOTAL:</b>	<b>\$ 27,752,446.72</b>	<b>\$ 19,615,998.85</b>	<b>\$ 47,368,445.57</b>

WILLCOX, PIROZZOLO AND MCCARTHY

PROFESSIONAL CORPORATION

FIFTY FEDERAL STREET

BOSTON, MASSACHUSETTS 02110

HAROLD M. WILLCOX (1925-1975)

JACK R. PIROZZOLO

RICHARD F. MCCARTHY

RICHARD L. BINDER

RICHARD E. BENNETT

JUDITH S. ZISS

CHRISTOPHER R. GODDU

TELEPHONE (617) 482-5470

TELECOPIER (617) 423-1572

OF COUNSEL

RICHARD P. CROWLEY

(REGISTERED PATENT ATTORNEY)

July 23, 2002

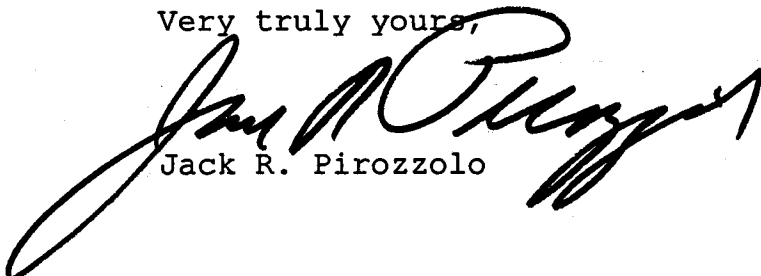
Ralph T. Lepore, III, Esquire  
Holland & Knight  
10 St. James Avenue  
Boston, MA 02116

Re: Liberty Mutual Insurance Co. v.  
The Black & Decker Corp., et als.  
Civil Action No. 96-10804-DPW

Dear Ralph:

We are sending to you herewith some recent invoices pertaining to defense costs in the Alwell Long-Term Exposure Claim. The invoices are labeled Supp 2-1726-1729.

Very truly yours,

  
Jack R. Pirozzolo

JRP:ps  
Enclosures

5750.4

WILLCOX, PIROZZOLO AND MCCARTHY

PROFESSIONAL CORPORATION

FIFTY FEDERAL STREET

BOSTON, MASSACHUSETTS 02110

HAROLD M. WILLCOX (1925-1975)  
RICHARD P. CROWLEY (1927-2001)

JACK R. PIROZZOLO  
RICHARD F. MCCARTHY  
RICHARD L. BINDER  
RICHARD E. BENNETT  
JUDITH S. ZISS  
DAVID M. MAGEE  
(REGISTERED PATENT ATTORNEY)

TELEPHONE (617) 482-5470

TELECOPIER (617) 423-1572

JACK R. PIROZZOLO  
DIRECT DIAL: 617-482-5590  
JPIROZZOLO@WPMLAW.COM

OF COUNSEL  
GERRY A. BLODGETT  
(REGISTERED PATENT ATTORNEY)

December 3, 2002

Ralph T. Lepore, III, Esquire  
Holland & Knight  
10 St. James Street  
Boston, Massachusetts 02116

Re: Liberty Mutual Insurance Co. v.  
The Black & Decker Corp., et als.  
Civil Action No. 96-10804-DPW

Dear Ralph:

I enclose copies of recent invoices for defense costs incurred by Black & Decker with respect to the Alwell and Maritime Asbestos Long-Term Exposure Claims. The invoice in connection with the Alwell claim is labeled SUPP-2 01730 to SUPP-2 01731 and the invoices in connection with the Maritime Asbestos Claim are labeled SUPP-2 1732 to SUPP-2 1736.

I also enclose updated cost summaries for those claims. As you will see from the cost summaries, the principal amount currently due in connection with Alwell is \$6,289.37, which includes invoices that were sent to you as early as February 4, 2002 and the principal amount currently due in connection with Maritime Asbestos is \$4,657.08 which includes invoices sent to you as early as February 4, 2002. There is also a principal of \$189.06 due in connection with the Maritime Asbestos claim, representing an invoice in the amount of \$189.00, sent to you on February 4, 2002 (the payment that Liberty Mutual made on February 12, 2002 is \$.06 less than the amount due on invoices that Liberty Mutual

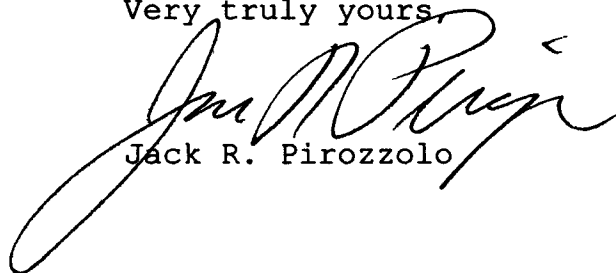
Ralph T. Lepore, Esquire

-2-

December 3, 2002

received prior to February 4, 2002).

Very truly yours,

A handwritten signature in black ink, appearing to read "Jack R. Pirozzolo", written over the typed name.

Jack R. Pirozzolo

JRP:jn  
Enclosures

**WILLCOX, PIROZZOLO AND MCCARTHY**

PROFESSIONAL CORPORATION

FIFTY FEDERAL STREET

BOSTON, MASSACHUSETTS 02110

HAROLD M. WILLCOX (1925-1975)  
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DAVID M. MAGEE  
(REGISTERED PATENT  
ATTORNEY)  
JASON A. PIROZZOLO

TELEPHONE (617) 482-5470

TELECOPIER (617) 423-1572

OF COUNSEL  
GERRY A. BLODGETT  
(REGISTERED PATENT  
ATTORNEY)

January 2, 2004

Ralph T. Lepore, III, Esquire  
Holland & Knight  
10 St. James Street  
Boston, Massachusetts 02116

Re: Liberty Mutual Insurance Co. v.  
The Black & Decker Corp., et al.  
Civil Action No. 96-10804-DPW

Dear Mr. Lepore:

I enclose a copy of a recent invoice for defense costs incurred by Black & Decker with respect to the Alwell Long-Term Exposure Claim. The invoice is labeled SUPP-2 1749-1750.

Very truly yours,

  
Richard L. Binder

RLB:hs  
Enclosure

1/5/03

57586-4

**WILLCOX, PIROZZOLO AND MCCARTHY**

PROFESSIONAL CORPORATION

FIFTY FEDERAL STREET

BOSTON, MASSACHUSETTS 02110

HAROLD M. WILLCOX (1925-1975)  
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RICHARD E. BENNETT  
JUDITH S. ZISS  
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(REGISTERED PATENT  
ATTORNEY)  
JASON A. PIROZZOLO

TELEPHONE (617) 482-5470

TELECOPIER (617) 423-1572

JACK R. PIROZZOLO  
DIRECT DIAL: 617-482-5590  
JPIROZZOLO@WPMLAW.COM

March 25, 2004

OF COUNSEL  
GERRY A. BLODGETT  
(REGISTERED PATENT  
ATTORNEY)

Ralph T. Lepore, III, Esquire  
Holland & Knight  
10 St. James Street  
Boston, Massachusetts 02116

Re: Liberty Mutual Insurance Co. v.  
The Black & Decker Corp., et al.  
Civil Action No. 96-10804-DPW

Dear Mr. Lepore:

I enclose copies of additional invoices for defense costs incurred by Black & Decker with respect to the Maritime Asbestos and Alwell Long-Term Exposure Claims. The Maritime Asbestos invoices are labeled SUPP-2 1751-1757, and the Alwell invoices are labeled SUPP-2 1758-1762.

Very truly yours,

  
Jack R. Pirozzolo

JRP:hs  
Enclosures

3-31-04

57596